

Ordinance No. 515

An Ordinance to Approve Entry into a Communications Right-of-Way Use Agreement

WHEREAS, Fiber Technologies Networks, L.L.C. (“Fibertech”) is a limited liability company duly organized and existing under the laws of the State of New York that provides telecommunications services and/or information services; and

WHEREAS, Fibertech desires to construct, install, maintain and operate facilities within the public rights-of-way of the City of New Castle for the purposes of providing telecommunications services and/or information services; and

WHEREAS, the City has the legal authority to grant Fibertech and its affiliates access to the Public Rights-of-Way and to obtain fees for the use of the Public Rights-of-Way; and

WHEREAS, the City has arranged for special counsel, The Cohen Group, of Pittsburgh, Pennsylvania, to negotiate an agreement for Fibertech consistent with applicable industry standards and compliant with federal law; and

WHEREAS, The Cohen Group has negotiated and recommends approval of a draft ten (10) year Communications Right-of-Way Use Agreement with Fibertech in the form attached to this Ordinance that grants Fibertech the right to utilize City rights-of-way to erect telecommunications facilities in exchange for payment by Fibertech to the City of an annual franchise fee equal to three percent (3%) of its Adjusted Gross Revenues from subscribers in the City actually received by Fibertech during the period of operation, with such annual payments made on or before July 1st of each year; and

WHEREAS, Section 11 (k) of the City Charter empowers the City to grant to persons or corporations in such manner and upon such terms and conditions as it may prescribe, franchises and privileges to locate, construct, extend and operate any enterprise, in, upon, or through any public park, square, street or other highway, provided that such grant shall be subject to repeal or revocation for the abuse, misuse or nonuse of the franchises and privileges thereunder granted, and provided further that no ordinance granting any such franchise or privilege shall be passed unless it shall receive the affirmative votes of two-thirds of all the members of Council.

NOW, THEREFORE, be it ordained by the Council of the City of New Castle, as follows:

SECTION 1: The City Administrator is authorized and directed to execute and deliver on behalf of the City to Fibertech Technologies Networks, L.L.C. the proposed ten (10) year Communications Right-of-Way Use Agreement in the form attached hereto as Exhibit A and to take such further action reasonably necessary to implement the terms of such Communications Right-of-Way Use Agreement.

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. Council hereby declares that it would have passed this

Ordinance and each section, subsection, sentence, clause or phrase irrespective of the fact that any one or more thereof is declared unconstitutional or invalid.

SECTION 3. Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided that any such repeal shall not abate a right of action already accrued under any repealed Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon passage.

First Reading **May 8, 2018**

Second Reading _____, 2018

Signed this ____th day of _____, 2018

Linda Ratchford, President of Council

I hereby certify that the foregoing Ordinance was duly approved by the Council of the Mayor and Council of New Castle upon the dates above set forth and signed by the President of Council.

Brian G. Whitaker, City Clerk

Approved this _____ day of _____, 2018

Jimmy Gambacorta, Mayor